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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
		03343/100I046-US1	
	Application Number	Filed	
	10/017,495-Conf. #5644	December 14, 2001	
	First Named Inventor Cuie Zhao		
Art Unit	2194	Examiner	L. Truong
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>26,272</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> <p><i>Diana C. Brantman</i> 38, 395 Signature</p> <p><i>for</i> Melvin C. Garner Typed or printed name</p> <p>_____ (212) 527-7717 Telephone number</p> <p>_____ March 7, 2006 Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>			



Rawson, Nelson and Nessett. (See Response to Office Action dated September 7, 2005, page 2). Applicants submit that the Examiner is incorrect in rejecting claims 1, 2, 9, 10 and 12-24 as being obvious over the aforementioned combinations.

In the present application, the claimed inventions are directed to methods for performing fault tolerance, load balance and failover of CORBA object servers transparently (Claim 1 and 15) and to a method of transparently load balancing CORBA object servers (Claim 23). Each claim recites “establishing name service clusters [in standard CORBA infrastructure] for the object servers which each contain a unique object binding table that contains object server references [and] in response to a request from a client that invokes a cluster” performing a load balance by having the name service select an object server located in the invoked cluster. The Name Service is inherent in the CORBA infrastructure, which means that the fault tolerance, the load balance and failover are performed transparently, i.e. without change apparent to the user, a notion which is expressly recited in each claim.

**A. The Cited Combination Fails to Result in the Claimed Invention**

The Applicants have previously argued that neither Ben-Shachar nor Emens, alone or in combination, teach or suggest the notion of transparency. (Response to Office Action dated September 7, 2005, page 3). The Examiner, relies on Ben-Shachar as disclosing this feature. (December 13, 2005 Advisory Action, page 3). Specifically, the Examiner states that “the process of obtaining a worker is transparent to the client, because the **service proxy** performs the necessary steps to obtain the worker, the service proxy can bind to the **service locator**...” (December 13, 2005 Advisory Action, page 3). This phrase relates to the process of obtaining a worker, so the Examiner’s response takes the term “transparent” out of context from the argument of the Applicant presented as a whole. Although, the Applicant states that the notion of transparency is not disclosed, if read in context, the applicant expressly states that “the fault tolerance, the load balance and the failover are performed transparently [and] [n]either Ben-Shachar nor Emens ... teach or suggest the notion of transparency”, clearly meaning as it relates to the fault tolerance, load balance and failover. (Response to Office Action dated September 7, 2005, page 3). In fact, in defining

transparency as invisible to a user, the Applicant cited Ben-Shachar Col. 11 ll. 62-63 to reaffirm that transparency indicates invisibility to a user, and thus acknowledged that Ben-Shachar discloses the notion of transparency. (Response to Office Action dated February 9, 2005, page 9). Such, however, does not teach or suggest that the “fault tolerance, the load balance and the failover are performed transparently”, as expressly recited in claims 1 and 15, and which the Examiner contends is disclosed by Ben-Shachar. As will become clear, the Examiner’s citations which point to the service proxy and the service locator, cannot possibly be used to disclose the notion of transparency within the context of performing the fault tolerance, the load balance and the failover.

To explain this notion further, the Examiner's additional argument from the December 13<sup>th</sup>, 2005 Advisory Action should first be addressed. The Applicant's previously argued that the present invention discloses performing load balancing, fault tolerance and failover transparently through the use of the CORBA Name Service; specifically that they are performed within the constraints of the existing CORBA communication pattern, with no changes to the communication pattern or services, and no changes to the user, client or server codes. (Response to Office Action dated September 7, 2005). The Applicants also stated that **"by introducing the notion of transparency**, the present invention, expressly and purposely constrains itself to the existing CORBA communication pattern and does not allow for introduction of new communication models, structures or methods." (Response to Office Action dated September 7, 2005, page 3). The Examiner replied by arguing that the aforementioned was "not in the claims" and that "the applicant failed to explain the connection or relationship between the change to communication patterns or services and the transparency". (December 13, 2005 Advisory Action, page 3). The applicant submits that the notion of transparency is clear in the claims, as it is specifically recited in each (see claims 1, 15 and 24), and that the relationship between changes to communication patterns or services and transparency is also clear, since transparency indicates invisibility to a user. If there were changes to communication patterns or services, invisibility to a user would no longer exist. The Applicant has clearly explained that transparency under claim 1 is achieved by embedding the functionality of fault tolerance, load balance and failover into the existing and inherent Name Service of the CORBA communication pattern, and performing those functions within the

constrains of that communication pattern. (Response to Office action dated February 9, 2005, page 9). As has been numerously pointed out, Ben-Shachar does not embed the functionality of performing the aforementioned functions into the existing CORBA communication pattern and instead builds a system on top of that pattern, **creating noticeable changes to a user, and thus failing to perform the fault tolerance, load balance and failover transparently.** (Response to Office action dated February 9, 2005, page 9). This notion returns the Applicant to addressing the Examiner's contention that Ben-Shachar teaches the notion of transparency and the provided citations with respect to the **Service Proxy** and the **Service Locator** (See page 2 above).

The Examiners own citations, (see Advisory Action dated December 13, 2005 page 3) not only fail to disclose performing fault tolerance, load balancing and failover transparently, but instead explicitly violate this technical advance. Unlike the present invention, which uses the Name Service, a standard CORBA infrastructure, Ben-Shachar eliminates the standard CORBA Name Service and replaces it with a self created **Service Locator, which automatically would require the participants to change their existing communication patterns to enable load balancing and fault tolerance.** (See further Response to Office Action dated September 7, 2005, page 4, paragraph 2). The **Service Locator** and the Service Manager (also self created) **must** be running to enable load balancing and fault tolerance. Further, and as an example Ben-Shachar requires that a **Service Proxy** be included in the client. (See further Response to Office Action dated February 9, 2005, page 10, paragraphs 1-4). Thus, instead of a client talking to the Name Service to obtain an object reference of the server as is the norm, a client using the Ben-Shachar system must talk to a Service Locator, create a service, allocate a worker (server) and then obtain that server, thus obligating participants to change their existing communication patterns to enable load balancing and fault tolerance. This technique of requiring additional infrastructure, i.e. running the Service Locator and/or Service Manager to enable load balancing and fault tolerance, **creates noticeable changes to a user, preventing the performance of the functions in a transparent manner.**

Emens, like Ben-Shachar fails to teach performing the fault tolerance, load balancing and failover transparently, and like Ben-Shachar expressly violates this technical advance. First, Emens requires changes to the client and server codes in addition to the functionality prescribed by

the standard, and second, it does even utilize CORBA, and therefore is neither bound nor constrained by it. Further, the claims all state these processes are on CORBA object server.

With respect to claim 15, 23 and 24, applicants repeat the above arguments and submit that they define over the prior art for the reasons stated above regarding claim 1.

### **B. The Examiner Fails to Establish a *Prima Facie* Case of Obviousness**

The Examiner has not established a *pram facie* case of obviousness for combining Ben-Shachar and Emens. The Examiner has not established a motivation (reason or suggestion) in the art that would lead an individual to combine the references. The Federal Circuit has held that in considering obviousness, the critical inquiry is whether something in the prior art as a whole suggests the desirability, and thus the obviousness, of making a combination. *In re Newell*, 891 F.2d 899, 901-02, 13 U.S.P.Q. 2d 1248, 1250 (Fed. Cir. 1992). The Examiner must show some objective teaching from the art that would lead an individual to combine the references, *i.e.*, the prior art suggested the desirability of the modification. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q. 2d 1780, 1783 (Fed. Cir. 1992).

With respect to dependant claims 2, 9, 10, 12-14 and 16-24, applicant submit that these claims depend directly or indirectly from the independent claims discussed above and should be allowed at least for the same reasons discussed for their respective base claims and in view of their own further recitations.

Dated: March 7, 2006

Respectfully submitted,

By

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Application No. (if known): 10/017,495

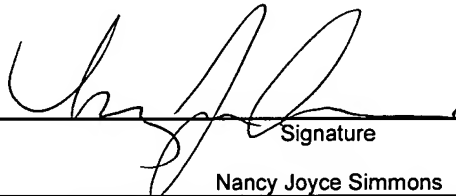
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